

REMARKS

Claims 1 to 14 and 18 are the pending claims being examined in the application, of which Claims 1 and 12 are the independent claims. Claims 1 to 14 and 18 are being amended. Reconsideration and further examination are respectfully requested.

The specification is objected to for an alleged failure to provide proper antecedent basis for the claimed subject matter. More particularly, the Office Action alleges that the specification fails to disclose a “programmable processor” or a “medium” as claimed in independent Claims 1 and 12.

In response, the Applicant respectfully submits that the “programmable processor” claim language was present in the originally filed claims, and that the originally-filed claims, and the language of the originally-filed claims, are a part of the originally-filed application, and the specification thereof. Thus, the original specification provides proper antecedent basis for the “programmable processor” terminology. In addition to the original claims, other portions of the specification, such as paragraph 14 of the originally-filed specification describe a microprocessor, or other processor, which executes instructions, which clearly provides antecedent basis for the claimed programmable processor. Paragraph 14 of the originally-filed application is reproduced below:

[0014] The examples illustrated in the accompanying drawings involve software-controlled processes that undertake certain functions. The processes are preferably implemented by one or more microprocessors or similar devices executing software instructions stored in memory or on some other type of physical media from which the instructions can be read, either directly or indirectly, by the processing device. However, the processes could be implemented using any combination of software, firmware and hardware. The microprocessor could, for example, be part of a general-purpose computer, a “personal digital assistant”, a cellular telephone, or other type of device. The processes could be, in some circumstances, distributed, meaning

they could be executing on multiple processors in different address spaces.

Paragraph 14 of the originally-filed application, *inter alia*, further describes that software-controlled processes can be implemented by at least one processor executing instructions, which instructions can be stored in memory or other physical media, which provides clear antecedent basis for the term “medium” in the claims. In view of the above, the Applicant respectfully submits that the originally-filed application provides more than ample antecedent basis for the terms referenced in the Office Action, and further requests reconsideration and withdrawal of the objection to the specification.

The Office Action rejects Claims 1 to 14 and 18 under 35 U.S.C. § 101, alleging that the claimed invention is directed to non-statutory subject matter. More particularly, the Office Action alleges that “A medium” is non-statutory as not being tangibly embodied in a manner so as to be executable. The Office Action further states that

“in view of the specification and Applicant’s remark on page 9, the process in the claims is implemented by any combination of software, firmware and hardware. Software, per se, is not statutory.”

The MPEP sets forth a multipart analysis as to whether or not a computer-implemented invention recites statutory subject matter under § 101, which analysis involves more than an inquiry into whether or not a process can be implemented in software. Without conceding in any way the correctness of the rejection, however, the Applicant amends the claims to even more clearly recite a processor-readable medium. It is submitted that the claimed processor-readable medium, which has function and a structure which permits the function to be realized, recites statutory subject matter under § 101. Reconsideration and withdrawal of the § 101 rejection are respectfully requested.

Claims 1 to 11 are rejected under 35 U.S.C. § 102(b) over U.S. Publication No. 2002/0013852 (Janik) and Claims 12 to 14 are rejected under 35 U.S.C. § 103(a) over Janik. Reconsideration and withdrawal of the rejections are respectfully requested for at least the reasons discussed below.

Turning to the specific language of the claims, Claim 1 recites a processor-readable medium embodying a set of instructions, that when read by a programmable processor of a first computing device, results in the processor performing a process. According to the process, media files and meta data information describing the media files are collected and available for experiencing by the user at the first computing device. A request is received by the first computing device from a second computing device, the request is for at least some of the meta data information collected at the first computing device. The requested meta data information and an identifier for each media file described by the requested meta data information is communicated to the second computing device, the identifier uniquely identifies the media file. A request is received by the first computing device from the second computing device to transfer a media file selected by the user at the second computing device, the request includes the identifier of the selected media file. The requested media file is transmitted to the second computing device as a stream, so that the media file available to be experienced by the user at the first computing device is made available for the user to experience at the second computing device.

The applied art, namely Janik, fails to teach, suggest or disclose the claimed process. Janik consists of an approach whereby media content is pre-selected at a user's personal computer for inclusion in a playlist that defines the music content that is to be played at a thin client, and the thin client merely provides controls to control the playback of the media content identified by the predefined playlists.

In response to the Applicant's previous remarks, the Examiner cites paragraphs 74 to 81 of Janik, and states (at page 9 of the Office Action):

Paragraphs 0074-0081, for example, disclose contents on the internet that is arranged for delivery to local client devices by a system that allows for graphical icons, which is referred to as content objects. The content object is a representation of a file system path that points to a digital content, a URL or IP address of a digital content stream originating from a server on Internet. The content object, in this case, is interpreted as "meta data" as claimed. A user can select a content using the

content objects transmitted from the server (interpreted as
host device as claimed) to the client

The cited portion of Janik is part of Janik's process whereby a user using the user's personal computer creates a playlist of music to be played by a thin client. More particularly, the user accesses a server via the user's personal computer and creates the thin client's playlist, using a drag-and-drop operation to drag an icon from the server's web page into a content editor executing on the user's personal computer. Janik's process focuses on a web server, which serves a web page of content icons to the user's personal computer, the user's personal computer, which provides the user with an ability to access the content icons to create a playlist, and a thin client that plays the content according to the playlist predefined by the user using the personal computer and the web server. A server serves information, content icons according to the cited portion of Janik, to Janik's user's personal computer. A server that serves information to another computer does not collect media files and meta data information for the media files so that the media file can be experienced by a user at the server. None of Janik's computers, including Janik's server, Janik's personal computer, which is used to predefine the media content that is to be played by a thin client, and Janik's thin client, which plays the content media content predefined by Janik's personal computer, correspond to the claimed first computing device, which interacts with another computing device to allow the user at the other computing device to discern the media files collected by the first computing device and then to select from the collection of media files the one or more media files that the user wants to experience at the second computing device, and further cannot correspond with the second computing device which interacts with the first computing device to give the user this capability.

Janik is missing multiple elements of each of Claims 1 to 14 and 18. Janik cannot therefore form the basis for a § 102 rejection, and reconsideration and withdrawal of the § 102(b) rejection of the claims so rejected are respectfully requested. Furthermore, Janik cannot form the basis for the §103(a) rejection of the claims, as the record is devoid of a teaching of the missing elements. In view of the foregoing and for at least the reasons discussed above, Claim 1 and the claims that depend from Claim1 are believed to

be in condition for allowance. Claim 12 and the claims that depend from Claim 12 are also believed to be in condition for allowance for at least the same reasons.

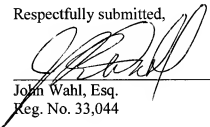
In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The applicant's attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 32361.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-2638. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,



John Wahl, Esq.
Reg. No. 33,044

Date: August 31, 2007

Customer Number 32361
GREENBERG TRAURIG, LLP
Met Life Building
200 Park Avenue, 20th Floor
New York, New York 10166
Phone: (212) 801-9200
Fax: (212) 801-6400
NY 238518044v1 8/31/2007